

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Agriculture, Environment, and General Government

BILL: CS/SB 1538

INTRODUCER: Environment and Natural Resources Committee and Senator Stewart

SUBJECT: Implementation of the Recommendations of the Blue-Green Algae Task Force

DATE: April 17, 2023

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|----------------|----------------|------------|------------------|
| 1. | <u>Carroll</u> | <u>Rogers</u> | <u>EN</u> | <u>Fav/CS</u> |
| 2. | <u>Reagan</u> | <u>Betta</u> | <u>AEG</u> | <u>Favorable</u> |
| 3. | _____ | _____ | <u>FP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1538 requires that each project listed in a new or revised basin management action plan (BMAP) with a total cost exceeding \$1 million must be monitored to determine if it is working to reduce nutrient pollution or water use, or both, as intended. The monitoring assessments must be completed expeditiously and included in each BMAP update.

The Department of Environmental Protection (DEP) may incur indeterminate costs in monitoring and assessing certain projects for reductions in nutrient pollution or water use, or both. These costs can be absorbed within existing resources.

The bill takes effect July 1, 2023.

II. Present Situation:

Blue-Green Algae Task Force

In 2019, Governor DeSantis directed the DEP to establish a Blue-Green Algae Task Force to expedite reduction of nutrient pollution and cyanobacteria blooms in the state.¹ The task force provides guidance and specific, science-based recommendations to expedite the restoration of

¹ State of Florida, Office of the Governor, *Executive Order Number 19-12 (2019)*, available at https://www.flgov.com/wp-content/uploads/orders/2019/EO_19-12.pdf; DEP, *Blue-Green Algae Task Force*, <https://protectingfloridatogether.gov/state-action/blue-green-algae-task-force> (last visited Mar. 13, 2023).

water bodies that have been adversely affected by cyanobacteria blooms.² The task force has focused on source identification, nutrient reduction and remediation efforts, algal toxins and human health effects, and innovative technologies for the prevention, cleanup, and mitigation of harmful algal blooms.³

Water Quality and Nutrients

Phosphorus and nitrogen are naturally present in water and are essential nutrients for the healthy growth of plant and animal life.⁴ The correct balance of both nutrients is necessary for a healthy ecosystem; however, excessive nitrogen and phosphorus can cause significant water quality problems.⁵

Phosphorus and nitrogen are derived from natural and human-made sources.⁶ Human-made sources include sewage disposal systems (wastewater treatment facilities and septic systems), overflows of storm and sanitary sewers (untreated sewage), agricultural production and irrigation practices, and stormwater runoff.⁷

Excessive nutrient loads may result in harmful algal blooms, nuisance aquatic weeds, and the alteration of the natural community of plants and animals.⁸ Dense, harmful algal blooms can also cause human health problems, fish kills, problems for water treatment plants, and impairment of the aesthetics and taste of waters. Growth of nuisance aquatic weeds tends to increase in nutrient-enriched waters, which can impact recreational activities.⁹

Basin Management Action Plans

The DEP is the lead agency in coordinating the development and implementation of total maximum daily loads (TMDLs).¹⁰ Basin management action plans (BMAPs) are one of the primary mechanisms the DEP uses to achieve TMDLs.¹¹ BMAPs are plans that address the entire pollution load, including point and nonpoint discharges,¹² for a watershed. BMAPs generally include:

² DEP, *Blue-Green Algae Task Force Consensus Document #1* (Dec. 2, 2019), available at https://floridadep.gov/sites/default/files/Final%20Consensus%20%231_0.pdf.

³ *Id.*

⁴ U.S. Environmental Protection Agency, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Environmental Protection Agency (EPA), *Sources and Solutions*, <https://www.epa.gov/nutrientpollution/sources-and-solutions> (last visited Feb 10, 2023).

⁸ EPA, *The Issue*, <https://www.epa.gov/nutrientpollution/issue> (last visited Feb. 10, 2023).

⁹ *Id.*

¹⁰ Section 403.061, F.S. DEP has the power and the duty to control and prohibit pollution of air and water in accordance with the law and rules adopted and promulgated by it. Furthermore, s. 403.061(21), F.S., allows DEP to advise, consult, cooperate, and enter into agreements with other state agencies, the federal government, other states, interstate agencies, etc.

¹¹ A TMDL is a scientific determination of the maximum amount of a given pollutant that can be absorbed by a waterbody and still meet water quality standards. DEP, *Total Maximum Daily Loads Program*, <https://floridadep.gov/TMDL> (last visited Mar. 24, 2023).

¹² Fla. Admin. Code R. 62-620.200(37). “Point source” is defined as “any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding

- Permitting and other existing regulatory programs, including water quality based effluent limitations;
- Best management practices and non-regulatory and incentive-based programs, including cost-sharing, waste minimization, pollution prevention, agreements, and public education;
- Public works projects, including capital facilities; and
- Land acquisition.¹³

The DEP may establish a BMAP as part of the development and implementation of a TMDL for a specific waterbody. First, the BMAP equitably allocates pollutant reductions to individual basins, to all basins as a whole, or to each identified point source or category of nonpoint sources.¹⁴ Then, the BMAP establishes the schedule for implementing projects and activities to meet the pollution reduction allocations.¹⁵ The BMAP development process provides an opportunity for local stakeholders, local government, community leaders, and the public to collectively determine and share water quality cleanup responsibilities collectively.¹⁶ BMAPs are adopted by secretarial order.¹⁷

BMAPs must include milestones for implementation and water quality improvement. They must also include an associated water quality monitoring component sufficient to evaluate whether reasonable progress in pollutant load reductions is being achieved over time. An assessment of progress toward these milestones must be conducted every five years and revisions to the BMAP must be made as appropriate.¹⁸

The DEP delineates priority focus areas, in coordination with the water management districts, for Outstanding Florida Springs in BMAPs.¹⁹ A priority focus area is the area or areas of a basin where the Floridan Aquifer is generally most vulnerable to pollutant inputs and where there is a known connectivity between groundwater pathways and an Outstanding Florida Spring.²⁰ In delineating priority focus areas, the DEP must consider groundwater travel time to the spring, hydrogeology, nutrient load, and any other factors that may lead to degradation of an Outstanding Florida Spring.²¹

In 2019, the Blue-Green Algae Task Force made the following recommendations for BMAPs:

- Include regional storage and treatment infrastructure in South Florida watersheds;
- Consider land use changes, legacy nutrients, and the impact of the BMAP on downstream waterbodies;
- Develop a more targeted approach to project selection; and

operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged.” Nonpoint sources of pollution are sources of pollution that are not point sources.

¹³ Section 403.067(7), F.S.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ DEP, *Basin Management Action Plans (BMAPs)*, <https://floridadep.gov/dear/water-quality-restoration/content/basin-management-action-plans-bmaps> (last visited Mar. 13, 2023).

¹⁷ Section 403.067(7), F.S.

¹⁸ *Id.*

¹⁹ Section 373.803, F.S. Outstanding Florida Springs include all historic first magnitude springs and associated spring runs, as well as De Leon, Peacock, Poe, Rock, Wekiwa, and Gemini springs and their associated spring runs. Section 373.802, F.S.

²⁰ Section 373.802, F.S. Outstanding Florida Springs

²¹ Section 373.803, F.S.

- Evaluate project effectiveness through monitoring.²²

III. Effect of Proposed Changes:

Section 1 amends s. 403.067, F.S., which governs establishment and implementation of total maximum daily loads. The bill requires that for each project listed in a new or revised BMAP with a total cost exceeding \$1 million, the DEP must assess through integrated and comprehensive monitoring whether the project is working to reduce nutrient pollution or water use, or both, as intended. The bill provides that the assessments must be completed expeditiously and included in each BMAP update.

The bill makes technical changes.

Section 2 provides an effective date of July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

²² DEP, *Blue-Green Algae Task Force Consensus Document #1* at 2-4.

C. **Government Sector Impact:**

The DEP may incur indeterminate costs in monitoring and assessing certain projects for reductions in nutrient pollution or water use, or both.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 403.067 of the Florida Statutes.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environment and Natural Resources on April 4, 2023:

The committee substitute removes provisions requiring periodic inspections of onsite sewage treatment and disposal systems. It also removes language requiring new or revised basin management action plans to include a list that identifies and prioritizes spatially focused suites of projects in areas likely to yield maximum pollutant reductions.

B. **Amendments:**

None.